Toffoloni v. LFP Publishing Group, LLC Doc. 70

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administratrix and Personal Representative of the ESTATE OF NANCY E. BENOIT,	)
Plaintiff,	)
v.	) CIVIL ACTION) FILE NO. 1:08-CV-0421-TWT
LFP PUBLISHING GROUP, LLC, d/b/a Hustler Magazine, MARK SAMANSKY, an Individual, and other distributors and sellers of, Hustler Magazine, as Defendants X, Y, and Z,	)
Defendants.	)

STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL AND INADVERTENT PRODUCTION OF PRIVILEGED INFORMATION

Pursuant to Fed. R. Civ. P. 26(c) and Federal Rule of Evidence ("FRE") 502, IT IS HEREBY ORDERED, that in order to protect the legitimate interests of the parties in maintaining the confidentiality of certain sensitive, private and/or proprietary information that may be disclosed during the course of this action, and to address the potential for inadvertent disclosure of documents and/or electronic

Dockets.Justia.com

information protected under applicable attorney-client privileges and work product protections, the parties will follow these directions:

1. Designation of Material as Confidential. Any party to the above-captioned actions that provides discovery materials (whether by producing documents, answering interrogatories, responding to requests for admissions, providing testimony at a deposition or through some other device) (hereinafter, "Discovery Material(s)") may designate such Discovery Materials as "Confidential." "Confidential" Discovery Material shall mean any document or information supplied in any form, or any portion thereof, which the producing party in good faith believes contains confidential personal, business, commercial, research, or financial information of any party. Discovery Material designated as "Confidential" shall be afforded the protections set forth in paragraph 5 of this Stipulation and Protective Order. No Discovery Material that before its production in this litigation is known by the producing party to have been available to the public shall be designated as "Confidential." Agreeing to and/or producing or receiving Discovery Materials, or entering into or otherwise complying with the terms of this Stipulation and Protective Order shall not operate as an acknowledgement by any party that the Discovery Material is admissible, relevant or discoverable.

2. Designation of Deposition Testimony as Confidential. Any party or person may designate as "Confidential" such portions of his/her deposition testimony (including exhibits) as implicate "Confidential" information of the type described in Paragraph 1 hereof by advising the court reporter and all parties of such fact on the record during the deposition or within ten (10) days, not including weekends or holidays, after the transcript of the deposition is received by his or her counsel. Until the ten (10) day period expires, all of the party's testimony will be considered "Confidential." No person shall be present during any portion of the deposition which has been designated as "Confidential" unless that person is inside or outside counsel for the parties or an authorized recipient of Discovery Materials containing such confidential information under the terms of this Stipulation and Protective Order.

3. Designation of Documents and Other Discovery Material As "Confidential". Documents, portions of documents, answers to interrogatories, responses to requests for admission, and other Discovery Materials that meet the "Confidential" criteria of Paragraph 1 hereof may be designated as "Confidential" by stamping or otherwise marking the document, the portion of the document, or the Discovery Material as "Confidential." Documents need not be designated as "Confidential" at the time they are made available for inspection but may be so

designated at the time copies are produced, and information in such documents will be considered "Confidential" until copies are produced.

4. Subsequent Designation of Discovery as "Confidential". Any Discovery Material that is produced without being designated as "Confidential" may be so designated, with respect to future disclosure, by the producing party or person by sending a letter making such designation to each party who has received such material. Disclosure of such material before its designation as "Confidential" shall not violate the terms of this Stipulation and Protective Order, provided, however, that a person possessing material that is subsequently designated as "Confidential" shall prevent further disclosure of such material except as authorized in this Stipulation and Protective Order.

5. Restrictions on the Disclosure of Confidential Discovery Material. Discovery Material designated as "Confidential" and all information contained therein shall not be disclosed to or discussed with any person except:

A. inside and outside counsel to the parties, their insurer(s) and their staffs (including legal assistants and other persons employed and supervised by such counsel as reasonably necessary to assist such counsel in the conduct of this litigation);

B. the parties and any agents of the parties as reasonably necessary to assist counsel in the conduct of this litigation;

C. experts from whom counsel may seek to obtain evidence or advice, to the extent deemed reasonably necessary by counsel for the conduct of this litigation;

D. the Court (including the jury);

E. court reporters; and

F. other persons only upon consent of the designating party or person or if the Court, after reasonable written notice to all affected parties, orders such disclosure.

Persons having knowledge of Confidential Discovery Material by virtue of their participation in the conduct of this litigation shall use that Confidential Discovery Material only in connection with the prosecution or appeal of this litigation or other litigation between the same parties, and shall neither use such Confidential Discovery Material for any other purpose nor disclose such Confidential Discovery Material to any person who is not listed in Paragraphs 5A-F of this Stipulation and Protective Order.

6. Compliance. Before the disclosure of material which has been designated as "Confidential" to those persons or entities authorized under

paragraphs 5C and 5F of this Stipulation and Protective Order to receive such material, any such individual or entity shall be provided with a copy of this Stipulation and Protective Order, which he or she shall read. Upon reading this Stipulation and Protective Order, such person or entity shall sign a certification, substantially in the form annexed hereto as Exhibit A, acknowledging that he or she has read this Stipulation and Protective Order and will abide by its terms. Copies of signed certifications shall be retained by counsel for the party obtaining them, and provided to counsel for any party upon request within two (2) days of any such request.

7. Inadvertent Production. If Discovery Materials (which term includes, but is not limited to, electronic data and information) subject to a claim of attorney-client privilege, attorney work product, or any other ground on which production of such information should not be made to any party is nevertheless inadvertently produced to such party, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product, or other ground for withholding production to which the producing party or other producing person would otherwise be entitled.

If a claim of inadvertent production is made, pursuant to this Paragraph, with respect to information then in the custody of another party, such party shall promptly return to the claiming party or person that material as to which the claim of inadvertent production has been made. In the case of electronic data and information, the party in receipt of electronic data and information subject to a claim of inadvertent production shall: (a) promptly return the production hard drive or other media containing the privileged documents; (b) destroy all other electronic or paper copies of the data and information obtained from the production hard drive or other media in its possession or control; and (c) make reasonable efforts to delete the data and information obtained from the production hard drive or other media from any database or other medium in the receiving party's possession or control in which the data and information are electronically stored. Within ten (10) business days following a claim that electronic data and information was inadvertently produced, the producing party will provide the party returning such material with a new production hard drive or other media containing electronic versions of all of the data and information on the original production media, except for the privileged data and information, which will be described in a privilege log accompanying the new production hard drive or other media. The party returning the original production hard drive or other media may then move the Court for an order compelling production of the material claimed to be inadvertently produced, but said motion shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

8. Resolution of Challenges to Designations. Entering into, agreeing to and/or producing or receiving materials, or otherwise complying with the terms of this Stipulation and Protective Order shall not: (a) operate as an admission by any party that any particular Discovery Material contains or reflects proprietary or sensitive commercial or personal information or other confidential matter; (b) prejudice in any way the rights of any party to apply to the Court for an order that information designated as "Confidential" need not be treated as confidential; (c) prejudice in any way the rights of any producing party or person to object to any discovery requests that seek information or documents that it considers not subject to discovery; or (d) prejudice in any way the rights of a party to seek a determination of the Court that particular Discovery Materials should be produced. No party to this action is obliged to challenge the projected status of any Discovery Material at the time of receipt, disclosure, or designation thereof, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that a receiving party seeks to challenge the appropriateness of the "Confidential" designation of any Discovery Material, such party shall consult in good faith with the designating party or person in an effort to resolve the matter on an informal

basis. In the event no agreement is reached, the receiving party shall give the producing party written notice challenging the designation of specified Discovery Material designated as "Confidential." The producing party shall have ten (10) business days after receipt of the required written notice within which to seek a protective order pursuant to Fed. R. Civ. P. 26. Any document, testimony or other material designated as "Confidential" shall continue to be treated as confidential until the Court rules on any motion concerning the "Confidential" designation, or until such motion is otherwise resolved.

9. Filing of Confidential Material Under Seal. In the event any material designated as "Confidential" is included in, attached to, referred to, or is an exhibit to any brief, memorandum, document, or transcript that is filed with either the Court or the Clerk during the course of proceedings arising out of either of these actions, the party using such material shall file the same or submit it to the Court in a sealed envelope bearing the following legend:

"CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER.

NOT TO BE OPENED EXCEPT BY ORDER OF THE COURT."

10. Receipt of Subpoena. If any party in possession of material designated as "Confidential" under this Stipulation and Protective Order receives a subpoena or other formal or written request seeking production or other disclosure

of such material, that party shall within two (2) business days after receipt of such subpoena or request give written notice to counsel for the party or person who designated the materials as "Confidential," and shall enclose a copy of the subpoena or request in the required written notice. The party in possession of such material shall not incur any further obligation with respect to resisting such compulsory process. Where possible, at least ten (10) business days' notice before production or other disclosure shall be given to counsel for the party or person who designated the materials as "Confidential."

11. Return Of Discovery Material Upon Termination of This Action. Within forty-five (45) days after the final conclusion of an action covered by this Stipulation and Protective Order (including any appeals), and unless the Court otherwise orders, any Discovery Material produced in that action and any copies thereof which have been made shall be returned to the producing party or person upon request or such material shall be certified in writing to have been destroyed, provided, however, that counsel shall be permitted to retain such materials as constitute a part of the record file of the litigation.

12. Modification of Order. A party or non-party may at any time apply to the Court for modification of this Order pursuant to a regularly noticed motion.

13. Non-parties. Any person or entity not a party that provides Discovery Materials in the above-captioned matter, may, through his, her or its counsel, choose to become subject to this Stipulation and Protective Order for the purposes of designating as "Confidential" Discovery Materials provided by that person. Materials designated as "Confidential" by any person or entity not a party that chooses to become subject to this Stipulation and Protective Order shall be accorded the protections set forth in Paragraph 5 of this Order. Any person or entity not a party that chooses to become subject to this Stipulation and Protective Order may do so by signing a copy of this Stipulation and Protective Order, having his, her or its counsel sign the Stipulation and Protective Order, and sending a signed copy of the same to counsel for each party.

IT IS SO ORDERED this 22nd day of December 2009

/s/Thomas W. Thrash
Thomas W. Thrash
United States District Judge
Northern District of Georgia
Atlanta Division

PREPARED BY:

James C. Rawls
Georgia Bar No. 596050
Barry J. Armstrong
Georgia Bar No. 022055
S. Derek Bauer
Georgia Bar No. 042537
Darrell J. Solomon
Georgia Bar No. 305922
MCKENNA LONG & ALDRIDGE LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
(404) 527-4000
(404) 527-4198 (facsimile)

Attorneys for LFP Publishing Group, LLC
d/b/a Hustler Magazine, et al.

EXHIBIT A

Maureen Toffoloni v. LFP Publishing Group, LLC, et al., Civil Action File No.: 1:08-CV-0421-TWT, U.S. District Court for the Northern District of Georgia

ACKNOWLEDGMENT

I hereby acknowledge that I have read the Stipulation and Protective Order entered by the Court in the above-captioned action and understand the terms thereof and agree to be bound thereby.

DATED: ____________________ ________________________________

Name (typed or printed)

____

Signature

ATLANTA:5195730.1